U. S. SENATE

Republican Policy Committee

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December 5, 1995

From the White House to the Big House: If He were a CEO, He'd Be Looking at Jail Time

Clinton's Disinvestment Strategy: Dishonest and Disingenuous

The Administration has long talked out of both sides of its mouth when it comes to stopping its deficit spending. However, last week's double-talking can't go without notice: at the same time the President's Labor Secretary was warning about the danger to private pension funds from raids by unscrupulous employers, its Treasury Secretary had a hand in the federal employee pension fund cookie jar all the way up to the shoulder.

Through the process known as "disinvesting," the Clinton Administration is, in the words of Senate Finance Committee Chairman Bill Roth, "raiding" federal employees pension plans by using pension funds of almost 3 million federal employees to keep on borrowing, despite the debt limit. This is akin to the ultimate in worst-case scenarios for stolen credit cards: not only is someone else using your stolen card, but that someone is a person for whom a $4.9 trillion limit on his own credit card was not enough!

This duplicity — a hallmark of this White House — is bad enough on its own, but it has the double cost on federal employees of tampering with their retirement savings and denying them — and the rest of the country— the savings they would see from a balanced budget.

The Clinton Administration's action is figuratively criminal, and federal employees and the American economy are the victims. Yet, if this type of creative accounting happened in the private sector, it literally would land the perpetrator in jail for up to one year. That is, in the real world, "raiding" your employees' pension funds is a serious crime, but with the Clinton Administration, it's just another maneuver in its never-ending battle against a balanced budget.

Double Standards, Double Talk: "Hands Off: This is Not Your Money"

Specifically, Secretary Rubin manipulated Treasury securities held by the federal pension trust funds. This was done in two ways on November 15. First, Rubin authorized the "conversion to cash" of the entire $21.5 billion of holdings in the federal employees' Thrift Savings Plan (TSP) by failing to reinvest these in Treasury securities when they matured. Second and more importantly, he also authorized the "disinvestment" of $39.8 billion from the $375 billion Civil Service Retirement and Disability Fund (CSRDF) by redeeming these securities prior to their maturity.

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The Clinton Administration's end-run around the debt limit — if not around a balanced budget altogether — is especially troubling for any number of reasons, not the least of which is the contrary actions taken by the Treasury Secretary regarding the federal pension funds followed closely by an announcement by Labor Secretary Robert Reich regarding his department's crackdown on the improper usage and the underfunding of employee pensions in the private sector.

Here's what Reich had to say about private-sector pensions last week:

> *"Labor Department investigators in recent months have discovered a growing number of companies that have been raiding their employees 401k pension plans. We have reason to believe that some companies are simply taking contributions from employees and using the money for their own purposes...[They] have regarded this 401k pool of money coming from employees almost like an interest-free loan...Some of them have every intention of paying the money back, but they are using this for their own purposes to pay bills, to pay other costs of doing business...All of these employers are acting illegally... And I want to send a very clear and unambiguous message to employers...* ***And my message is: hands off. This is not your money. This money belongs to employees. It is vitally important that this money get to where it is supposed to go."***
> [Labor Secretary Robert Reich, transcript from news conference, 11/27/95, emphasis added]

These words ought to be striking a chord over at Treasury, because the federal retiree trust funds the Treasury Secretary has been manipulating (***"for their own purposes to pay bills, to pay other costs of doing business")*** are the federal equivalents of the types of pension plans Secretary Reich is describing.

In the case of employers using pension funds ***"for their own purposes to pay bills, to pay other costs of doing business,"*** Reich was unequivocal when it came to the private sector:

> *"There is simply no excuse for employers to use this money for their own purposes...This is a serious matter. Let the word go out loud and clear: employers, you potentially face a jail sentence for doing this."*
> [Robert Reich, 11/27/95]

The bottom line for business is that these funds cannot be used for any other purpose than the benefits for which they are intended. A Congressional Research Service report makes clear that "the direct or indirect sale, exchange, loan, or leasing of any property between the plan and a party-in-interest are prohibited transactions. Furthermore, the act generally prohibits a fiduciary from dealing with the income or assets of the plan in his own interest or for his own account" [CRS Report #94-506 EPW, "Private Pension Plan Standards: A Summary of ERISA," 3/3/95].

The civil and criminal penalties are clear. The tax penalties include a fine of 5 percent of the amount involved and up to 100 percent if the plan is not promptly made whole. The labor penalties include a 20-percent penalty of the amount recovered, removal of the fiduciary (the person placed in a formal position of trust for the funds), a $5,000 fine ($100,000 if the violator is not an individual), and up to one year in jail for a willful violator. In other words, if you're in the private sector and you do what Rubin is doing with the federal trust fund, you could wind up in jail.

Adding further irony to this interesting juxtaposition is Reich's statement that *"we are also looking at legislative improvements — legislative reforms that will eliminate whatever wiggle room is still there..."* Of course, when Congress submitted legislation last month to prevent the trust fund manipulation that the Treasury is now practicing, President Clinton vetoed it.

Underfunding and Overreaching

Secretary Reich, on November 29, issued a report on the welcomed decline in the underfunding of private sector pension plans by saying: "Protecting Americans' retirement security is one of our top priorities."

Yet, underfunding is a key issue with the federal retiree trust funds, despite the fact that the Clinton Administration is playing with them like marionettes. The Civil Service Retirement trust fund is underfunded by over one-half trillion dollars, according to the Congressional Budget Office (CBO):

> *"As of October 1, 1993, the value of retirement benefits already earned by current employees and annuitants was $857.5 billion. The retirement fund account had interest-bearing claims on the Treasury of $317.4 billion.* ***That amount leaves an 'unfunded liability' of $540.1 billion, almost all of which is the result of underfunding CSRS benefits."***
> [James Blum, CBO Deputy Director, 6/28/95, emphasis added]

The Clinton Administration's tolerance level for this kind of conduct in the private sector is vastly different:

> *"We have begun to chip away at the underfunding core. As the Administration's Retirement Protection Act takes hold, we will attack the root of underfunding with consistency and certainty."*
> [Pension Benefit Guaranty Corporation Executive Director Martin Slate, 11/29/95]

Yet, its response to the glaring federal problem is just the opposite:

> *"The Administration also proposes a series of intragovernmental transfers from the Treasury to the CSRDF that would* ***eliminate the trust fund's $540***

billion unfunded liability over 40 years. *The only advantage of spreading that transfer over 40 years is to avoid an immediate, large increase in the federal debt limit..."*
[James Blum, CBO Deputy Director, 6/28/95, emphasis added]

In the private sector, the Clinton Administration professes to have "chipped away" at pension underfunding; however, with federal pensions, they not only tolerate vast underfunding, but are manipulating the pension funds and delaying the underfunding's resolution for 40 years in order to pay for their own deficit spending. The level of double standards and double-talk reaches its zenith with Labor Secretary Reich's November 29 statement regarding private pensions:

> *"The Administration has created a positive climate for pensions. Companies recognize that keeping their pensions better funded makes good business sense...We have finally put pension funding on the right track, but if Congress persists in allowing billions of dollars to be taken from pensions, it could derail pension security for America's working men and women."*

Yet, consider that:

- The Clinton Administration has failed to "create a positive climate for pensions" with its own employees.
- They want companies to "recognize that keeping their pensions better funded makes good business sense," but don't follow their own advice.
- And, it's not Congress that is tampering with tens of billions of dollars worth of federal pension moneys from already underfunded trust funds — it's the Clinton Administration.

When Will the Pension Tampering Stop?

Certainly, there is ample temptation for the Clinton Administration to continue its pension fund tampering in order to stave off a reconciliation with Congress over the balanced budget. CBO has projected that the Clinton budget will be yielding $200 billion deficits for the next 10 years. That will require a whole lot of additional borrowing.

A recent Congressional Joint Economic Committee study pointed out that if the Clinton Administration continued its trust fund "raiding," it could avoid either fiscal discipline or additional borrowing authority **until May of 1997** by going through the entire $375 billion Civil Service Retirement trust fund. If the Clinton Administration sought to extend this authority to other trust funds, such as the Military Retirement, the Railroad Retirement, Unemployment Insurance, Social Security, and other trust funds, it could continue on this path until **July of 2001.**

The Clinton Administration: Disinvesting Itself of Its Credibility

The Clinton Administration actually began disinvesting itself of its credibility in regard to federal borrowing authority well before it began disinvesting the federal retiree trust funds. It began doing so July 17 when Treasury Secretary Robert Rubin issued his first public statement warning of a "debt-limit crisis."

Thus began an unprecedented and concerted attempt by the Secretary to "scare-down" the bond market in hopes of getting Congress to extend authority for continued deficit spending without having to accept a balanced budget in return.

Secretary Rubin's effort to "bomb the bond market" failed and instead of accepting the debt limit extension Congress had passed, the Clinton Administration resorted to questionable gimmicks to circumvent the $4.9 trillion federal debt limit.

In a technical sense, the actions taken have the effect of lowering the federal government's borrowing below the legal limit. However, because the statutes by which these actions were taken requires the government to replace the funds and to make up any lost interest, ***the government is still effectively borrowing*** because it continues to accrue the same fiscal liabilities as if the debt limit had been raised. It is unclear how much of this amount authorized by the Secretary on November 15 has actually been used or what action the Treasury will take after the "borrowing bubble" created by the November 15 authorization has been consumed.

The Bottom Line

The Clinton Administration has made use of a very complex double-standard, double-talk disinvestment strategy in order to cover its trail of double time deficit spending. The points to remember are:

- **Double Standard.** The Clinton Administration is manipulating federal retirement funds in a way, if done in the private sector, that would produce civil and/or criminal penalties. The labor penalties include a 20-percent penalty of the amount recovered, a $5,000 penalty, removal of the fiduciary from that capacity, and up to one year in jail for a person willfully violating the law. The tax penalties include a penalty of 5 percent and up to 100 percent if the plan is not promptly made whole. Interestingly:

  — The Balanced Budget bill that President Clinton has promised to veto would increase the 5-percent tax penalty to 10 percent.

- **Double talk.** At the same time Treasury was pursuing this strategy, Labor Secretary Reich was warning against a similar practice in the private sector and touting strict enforcement where "investigations have led to criminal prosecutions..." [11/27/95]

- **Double talk.** At the same time Treasury was pursuing this strategy, Labor Secretary Reich was emphasizing Labor's scrutiny of underfunded pension plans, stating that "protecting Americans' retirement security is one of our top priorities." [11/29/95]

- **Double talk.** Amazingly, the primary retirement fund that Treasury Secretary Rubin is disinvesting (the Civil Service retirement trust fund) is underfunded by $540 billion, according to CBO.

- **Double time.** The only reason the Clinton Administration is going to such lengths is to avoid balancing the budget and to continue deficit spending of $200 billion a year for the next 10 years, according to CBO.

- There's a way out, but he won't take it: President Clinton has promised to veto the bill that will balance the budget in seven years, and eventually eliminate the need to raise the debt ceiling at all.

- President Clinton has vetoed legislation to temporarily extend the debt limit and remove the need for his disingenuous disinvesting.

- President Clinton has vetoed legislation to prohibit exactly the kind of dishonest disinvestment that Secretary Rubin is practicing today with the federal retiree trust funds.

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